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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Erica Welker

Plaintiff,

v.

Law Office of Daniel J. Horwitz

Defendant.

Case No: 08-CV-2259 IEG (WMc)

**Plaintiff's Evidentiary Objections
To Defendant's Opposition To
Plaintiff's Motion for Summary
Judgment**

Date: March 23, 2010

Time: 9:30 AM

Location: U.S. District Court
Federal Courthouse,
940 Front Street,
Courtroom #1, 4th Floor

Judge: Hon. Irma E. Gonzalez

HYDE & SWIGART
San Diego, California

I. EVIDENTIARY OBJECTIONS

Plaintiff objects to the following portions of declarations and evidence submitted by Defendant.

A. DECLARATION OF DANIEL J. HORWITZ

1. Paragraph 10

“By looking at the validation letters that I have used in my collection law practice, I am able to show how a bona error resulted in the use of an outdated validation notice form that is the basis for this action”

Objection: This statement is impermissible argument and attempts to opine on one of the legal issues in this case, Defendant’s assertion of the Bona Fide Error defense. This statement should be struck.

2. Paragraph 13

“Based on Mr. Sargis’ recommendations, I elected to change my validation notices to confirm to his advise.”

Objection: This statement contains impermissible hearsay under F.R.E. § 802, as it attempts to inform the court what advice Mr. Sargis provided or did not provide to Defendant. This statement should be struck.

B. PLAINTIFF OBJECTS TO DEFENDANT'S USE OF UNPUBLISHED DECISIONS

Further, Plaintiff objects to the defendant’s repeated citing of unpublished decisions and requests the Court give no weight to that authority to the following:

1. *Rie v. Rosen*, 2005 WL 39866 (2nd Dist. 2005); Def. Opp. at p. 2;
2. *Cassady v. Union Adjustment Co.*, WL 4773976 (N.D. Cal. 2008); Def. Opp. at p. 5

Respectfully submitted,

Hyde & Swigart

Date: March 15, 2010

By: /s/ Robert L. Hyde
Robert L. Hyde
Attorneys for the Plaintiff